

April 2003

Update: Managing a Trial Under The Controlled Substances Act

CHAPTER 1

Major Features Of The Controlled Substances Act

1.6 Part 72 - Schedules of Controlled Substances

A. Schedule 1

Insert the following language at the end of subsection 1.6(A) on p 8:

Effective April 1, 2003, 2002 PA 710 amended the Public Health Code, at MCL 333.7212(f), by designating MDMA (or “ecstasy”) as a Schedule 1 controlled substance, thus aligning it with Michigan’s administrative rule, R 338.3113(j), which designates MDMA as a Schedule 1 drug.

CHAPTER 2

Delivery Offenses Under §§7401 and 7402

2.8 Criminal Penalties for Weight-Based Delivery Offenses Involving Schedule 1 or 2 Narcotics or Cocaine

Replace the existing language in Section 2.8 on pp 52-53, including subsections (A)-(D), with the following language:

Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401(2)(a) by changing the weight categories and corresponding penalties for all delivery offenses involving mixtures containing Schedule 1 or 2 narcotics or cocaine. Also changed under 2002 PA 665 is the consecutive sentencing provision under MCL 333.7401(3), which now makes consecutive sentencing for the commission of another felony discretionary. Finally, 2002 PA 665 added provisions allowing discharge from lifetime probation after an individual has served five or more years of that probationary period.

MCL 333.7401(2)(a), as amended by 2002 PA 665, delineates three new subsections of weight categories and punishment and leaves one subsection (Less Than 50 Grams)* intact, as follows:

*Except that effective March 1, 2003, 2002 PA 665 amended MCL 333.7401(2)(a) (iv) by deleting the mandatory one-year imprisonment requirement for deliveries of less than 50 grams.

A. 1,000 Grams or More

- Imprisonment for life or any terms of years or a maximum fine of \$1,000,000.00, or both. MCL 333.7401(2)(a)(i).
- Consecutive sentencing discretionary. MCL 333.7401(3).
- Eligible for probation, suspension of sentence, or parole. MCL 333.7401(3).
- Eligible for sentence reduction by disciplinary credits or other types of sentence credits. MCL 333.7401(3).

B. 450 Grams or More, But Less than 1,000 Grams

- Imprisonment for not more than 30 years or a maximum fine of \$500,000.00, or both. MCL 333.7401(2)(a)(ii).
- Consecutive sentencing discretionary. MCL 333.7401(3).
- Eligible for probation, suspension of sentence, or parole. MCL 333.7401(3).

- Eligible for sentence reduction by disciplinary credits or other types of sentence credits. MCL 333.7401(3).

C. 50 Grams or More, But Less than 450 Grams

- Imprisonment for not more than 20 years or a maximum fine of \$250,000.00, or both. MCL 333.7401(2)(a)(iii).
- Consecutive sentencing discretionary. MCL 333.7401(3).
- Eligible for probation, suspension of sentence, or parole. MCL 333.7401(3).
- Eligible for sentence reduction by disciplinary credits or other types of sentence credits. MCL 333.7401(3).

D. Less Than 50 Grams

- Imprisonment for not more than 20 years or a maximum fine of \$25,000.00, or both. MCL 333.7401(2)(a)(iv).*
- Consecutive sentencing discretionary. MCL 333.7401(3).
- Eligible for probation, suspension of sentence, or parole. MCL 333.7401(3).
- Eligible for sentence reduction by disciplinary credits or other types of sentence credits. MCL 333.7401(3).

*Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401(2)(a)(iv) by deleting the mandatory one-year imprisonment requirement.

CHAPTER 3

Possession Offenses Under §§7403

3.8 Criminal Penalties for Weight-Based Possession Offenses Involving Schedule 1 or 2 Narcotics or Cocaine

Replace the existing language in Section 3.8 on pp 76-78, including subsections (A)-(E), with the following language:

Effective March 1, 2003, 2002 PA 665 amended MCL 333.7403(2)(a) by changing the weight categories and corresponding penalties for all the possession offenses involving mixtures containing Schedule 1 or 2 narcotics or cocaine. In addition, 2002 PA 665 added provisions allowing discharge from lifetime probation after an individual has served five or more years of that probationary period.

MCL 333.7403(2)(a), as amended by 2002 PA 665, delineates three new subsections of weight categories and punishment but leaves two subsections (25 Grams or More, But Less Than 50 Grams, and Less Than 25 Grams) intact, as follows:

A. 1,000 Grams or More

- Imprisonment for life or any terms of years or a maximum fine of \$1,000,000.00, or both. MCL 333.7403(2)(a)(i).

B. 450 Grams or More, But Less than 1,000 Grams

- Imprisonment for not more than 30 years or a maximum fine of \$500,000.00, or both. MCL 333.7403(2)(a)(ii).

C. 50 Grams or More, But Less than 450 Grams

- Imprisonment for not more than 20 years or a maximum fine of \$250,000.00, or both. MCL 333.7403(2)(a)(iii).

D. 25 Grams or More, But Less Than 50 Grams

- Imprisonment for not more than four years or a maximum fine of \$25,000.00, or both. MCL 333.7403(2)(a)(iv).*

E. Less Than 25 Grams

- Imprisonment for not more than four years or a maximum fine of \$25,000.00, or both. MCL 333.7403(2)(a)(v). Although this offense authorizes the same penalties as the foregoing offense under MCL 333.7403(2)(a)(iv), this offense is subject to relief under MCL 333.7411 (otherwise known as “7411”).

*Effective
March 1, 2003,
2002 PA 665
amended MCL
333.7403(2)(a)
(iv) by deleting
the mandatory
one-year
imprisonment
requirement.

CHAPTER 15

Sentencing

15.2 Sentencing for Major Controlled Substance Offenses

B. Major Controlled Substance Offenses Requiring Minimum Prison Terms that Permit Departure for “Substantial and Compelling Reasons”

Replace the existing language in Section 15.2(B) with the following:

Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401(2)(a) and MCL 333.7403(2)(a) by changing the weight categories and corresponding penalties for all the delivery and possession offenses involving mixtures containing Schedule 1 or 2 narcotics or cocaine, thus deleting the previously authorized minimum imprisonment terms for certain major controlled substance offenses. In addition, 2002 PA 665 deleted the provisions in MCL 333.7401(4) and MCL 333.7403(3) that allowed a court to depart from a mandatory minimum sentence under the previous versions of MCL 333.7401(2)(a)(ii)–(iv) or MCL 333.7403(2)(a)(ii)–(iv).

C. Major Controlled Substance Offenses that Require Consecutive Sentences

Replace the second bullet in Section 15.2(C) with the following bullet:

- : MCL 333.7401(3), as amended by 2002 PA 665, effective March 1, 2003, now makes it discretionary for courts to impose a term of imprisonment for a violation of MCL 333.7401(2)(a) (manufacture, delivery, or possession with intent to deliver a Schedule 1 or 2 narcotic drug or cocaine) consecutively with any term of imprisonment imposed for the commission of another felony. In addition, 2002 PA 665 deleted the provision in MCL 333.7401(3) that applied to violations of MCL 333.7403(2)(a)(i)–(iv) (possession of a Schedule 1 or 2 narcotic drug or cocaine). Thus, there is currently no provision in these sections of the Controlled Substances Act that allows for consecutive sentences for possession offenses and another felony.

CHAPTER 15

Sentencing

15.2 Sentencing for Major Controlled Substance Offenses

D. Lifetime Probation Offenses

Insert the following language at the end of Section 15.2(D) on p 324:

Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401 and MCL 333.7403 by deleting lifetime probation as a sentencing option. Additionally, 2002 PA 665 now permits a person who was sentenced to lifetime probation before March 1, 2003, to be discharged after five years. Such a discharge may only occur upon recommendation of the probation officer or upon petition to the court for resentencing. MCL 333.7401(4) and MCL 333.7403(3) now provide:

“If an individual was sentenced to lifetime probation under subsection (2)(A)(iv) before [March 1, 2003] and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual’s probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.”

CHAPTER 15

Sentencing

15.2 Sentencing for Major Controlled Substance Offenses

Insert the following new subsection at the end of Section 15.2 on p 324:

E. Changes to Parole Provisions During the 2002 Legislative Session

Effective March 1, 2003, 2002 PA 670 amended MCL 791.234 by adding subparagraphs (11), (12), and (13), which now provide automatic parole eligibility for persons convicted of specified delivery and possession offenses before the effective date of the amendatory act, i.e., convictions entered before March 1, 2003, for offenses with the former weight classifications, as detailed below.

: 225 grams or more, but less than 650 grams (20-30 years)

A person convicted before March 1, 2003, of violating or conspiring to violate MCL 333.7401(2)(a)(ii) (delivery) or MCL 333.7403(2)(a)(ii) (possession) is eligible for parole after serving the *minimum of each sentence imposed for that violation or 10 years* of each sentence imposed for that violation, whichever is less. MCL 791.234(11).

: 50 grams or more, but less than 225 grams (10-20 years)

A person convicted before March 1, 2003, of violating or conspiring to violate MCL 333.7401(2)(a)(iii) (delivery) or MCL 333.7403(2)(a)(iii) (possession) is eligible for parole after serving the *minimum of each sentence imposed for that violation or 5 years* of each sentence imposed for that violation, whichever is less. MCL 791.234(12).

: Less than 50 grams (1-20 years, consecutive sentencing only)

A person convicted before March 1, 2003, of violating or conspiring to violate MCL 333.7401(2)(a)(iv) (delivery) or MCL 333.7403(2)(a)(iv) (possession) and who is sentenced to a term of imprisonment that is consecutive to a term of imprisonment imposed for any other violation of MCL 333.7401(2)(a)(i) to (iv) or MCL 333.7403(2)(a)(i) to (iv) is eligible for parole after serving *1/2 of the minimum sentence* imposed for each violation. MCL 791.234(13). However, if the person was on probation or parole at the time of the commission of the offense, he or she is not eligible for early parole from that sentence. *Id.*

Note: 2002 PA 670 did not amend the parole provisions governing the “650 grams or more” weight classification. Parole eligibility for those offenses is governed by MCL 791.234(6).